IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.282 OF 2007

Bilal Mehendihasan Shaikh ...Applicant.
V/s.
The State of Maharashtra ...Respondent.

Shri Subhash Zha with Laxmi Menon i/b Law Global for the Applicant.
Shri Y.S.Shinde, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 13th February, 2007.

P.C.:

1. Heard the learned counsel for the parties.

2. The applicant seeks to be released on bail in Crime No.170 of 2006 registered at Charkop Police Station for the offences punishable under Sections 302, 397 read with Section 34 of the I.P.C. Perused police papers.

3. Prosecution case in brief is that about 8 months before this incident, the present applicant Bilal, who is accused no.1, was married to accused no.2 Reshma, a girl aged about 17 years. After the marriage, they were living together. The present applicant suspected that she was also having illicit relations with some other person, therefore, he confronted her and

she confessed and informed him that his mother herself had induced her to maintain sexual relationship with Chand Basha, the deceased. Due to this the present applicant was provoked and became very angry. At that time he asked his wife to arrange meeting with Chand Basha. From 1st November, 2006 his wife Reshma repeatedly contacted the deceased on phone and invited him to meet her. On 11-11-2006, the deceased Chand Basha gave telephonic call to accused no.2 and invited her in room no.4 of building no.13 of Shivajiraje Complex. Accordingly, she went to the deceased. They had sexual intercourse and also took meals. After that both of them went to sleep. When the deceased was sleeping, accused no.2 Reshma informed her husband on mobile phone and he also came there. When the present applicant entered into the room, he found Chand Basha lying in complete naked condition and seeing this, he lost control of his mind and in the heat of passion and anger, he lifted a stool and assaulted on the head of Chand Basha due to which he was injured. He also gave fist blows and kicks on the abdomen and private part of Chand Basha and finally he lifted a towel and a pillow and with the help of the same, the applicant pressed the neck of the deceased Chand Basha due to which he died. While going away both the accused took away two mobile hand sets and a cash of Rs.5,900/- from the house. The

present applicant was seen leaving the room by one witness but nobody was knowing what had happened inside. After two days, fowl smell was noticed by the people and thereafter, police came and found the deadbody of Chand Basha in the room in highly decomposed condition. Post-mortem report confirmed the injuries on head and fracture of trachea, injuries on neck over the upper and lower lips. Autopsy surgeon opined that death was caused due to violent asphyxia. Accused no.2 Reshma and the present applicant came to be arrested on 24-11-2006.

4. The learned counsel for the applicant/accused vehemently contended that even if prosecution story itself is taken into consideration without any addition on behalf of the defence, it appears that the case is of culpable homicide not amounting to murder and that it falls under First exception to Section 300 of the I.P.C. According to him, as per the prosecution case itself, even though the wife of the applicant had confessed before him about her illicit relationship with the deceased, the present applicant had not seen them in that condition and during the relevant night, after he went to the spot, he saw the decease in complete naked condition and therefore, in the heat of passion, he lost control of his mind. According to him, it was a grave and sudden provocation. He contended that in a number

of cases decided by this Court as well as the Hon'ble Supreme Court, in such circumstances, benefit First Exception to Section 300 of the I.P.C. has been given to the accused and sentence of 4-6 years imprisonment has been awarded. He contends that in such circumstances possibility of accused being convicted of the offence of murder under Section 302 is almost ruled out and he may not be punished with life imprisonment and therefore, he contends that the applicant deserves to be granted bail.

5. The learned APP strongly contested this application. The whole case is based on circumstantial evidence. There is one witness who has seen the present applicant going out from the house of the deceased immediately after the incident. During the investigation the mobile handsets of the deceased and some cash were recovered on the basis of information given by the present applicant. It is contended that if at this stage, bail is granted, possibility of tampering with the prosecution evidence can not be ruled out. He contends that the defence story can not be considered at this stage.

6. It will not be proper for this court to enter into merits of the case. From the remand report

submitted by the Investigation Officer, it appears that wife of the applicant had gone to the deceased with the consent of the present applicant as he had asked her to arrange the meeting after her confession about illicit relations. Therefore, the applicant was expecting such a situation which he had seen. In such circumstances, at this stage, it is difficult to say whether the present applicant could be given benefit of grave and sudden provocation as enshrined in exception I to Section 300 of the I.P.C. His wife Reshma, who is accused no.2, has not yet made approver in the matter. The case is based on the circumstantial evidence. Taking into consideration the circumstances, I do not find it a fit case to grant bail. Possibility of tampering the prosecution evidence after grant of bail can not be totally ruled out.

7. Therefore, application stands rejected.

8. At this stage, the learned counsel for the applicant prays for early trial of the matter. The learned APP informs that charge-sheet is likely to be filed on 15th February, 2007. If charge-sheet is filed on that day, the learned Magistrate shall commit the case to the Court of Sessions as early as possible and the Sessions Court shall expedite the trial and disposed

off the matter as early as possible without being influenced by any observation made in this application.

(J.H.Bhatia,J.)